

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:99-cr-00215

KIRK BAXTER,

Defendant.

**MEMORANDUM OPINION AND JUDGMENT ORDER**

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Standard consideration.

The Defendant's original Total Offense Level was 41 which, with a Criminal History Category of VI, resulted in a guideline custody range of 360 months to life. The Defendant was sentenced at the low end of the guideline range to 360 months. Granting the Defendant a 2-level reduction in this case would reduce his Total Offense level to 39. However, that offense level, when combined with the Defendant's Criminal History Category of VI, would still result in a guideline

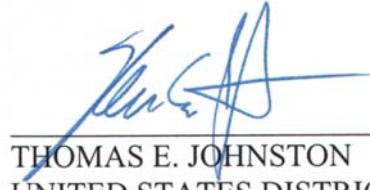
custody range of 360 months to life, thereby making the Defendant ineligible for a sentence reduction.

In their respective written responses, both the United States and the Defendant concur that the Defendant is ineligible for a reduction.

For these reasons, the Defendant's § 3582 Motion is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshals.

ENTER: April 29, 2009



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE